

This letter answers questions regarding the rolling stock exemption, trade-in allowances for aircraft, and amount of tax due when the rolling stock exemption can no longer be claimed. See 86 Ill. Adm. Code Sections 130.340 and 130.425 and 35 ILCS 105/10. (This is a GIL.)

November 7, 2005

Dear Xxxxx:

This letter is in response to your letter dated August 3, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The Department's regulation regarding private letter rulings provides that a private letter ruling will not be issued on alternative plans of proposed transactions or hypothetical situations. See 2 Ill. Adm. Code 1200.110(a)(3). The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Please be advised that I represent ABC. I am seeking on its behalf a determination or ruling regarding the Illinois Retailers' Occupation Tax and Use Tax.

No audit or litigation is pending with regard to the matters for which this request is made. The Department has not previously ruled on the same or a similar issue for the taxpayer or a predecessor. No previous request for a determination or ruling has been made.

**BACKGROUND:**

ABC is an Illinois corporation. ABC owns and operates aircraft in interstate commerce (FAA 135 aircraft).

ABC, recently acquired an aircraft from outside the State of Illinois that it intends to use in interstate commerce. The aircraft will be based in Illinois. The purchase price of the aircraft was \$1,475,000. The sum of \$790,000 was credited against the purchase price for the trade-in of another aircraft, leaving a net cash outlay of about \$636,828.26 after various adjustments for various fees, credits, etc.

ABC, as stated, intends to operate the aircraft in interstate commerce. Rolling stock is exempt from sales and uses taxes. 35 ILCS 105/3-60. However, ABC is aware that to claim the rolling stock exemption for aircraft, ABC must be able to show from its books and records that the property has moved in interstate commerce for hire on a regular and frequent basis. Accordingly, an after-the-fact determination is made that may result in the exemption either being accepted or rejected.

#### ASSUMPTIONS:

For purposes of this request, ABC, asks that you assume the following two scenarios:

First, that upon a subsequent audit, it is determined that the aircraft was not eligible for the rolling stock exemption from sales and use taxes *ab initio*; and,

Second, that after in fact using the aircraft in interstate commerce for a period of time, the aircraft is retired from that service and ceases to be used as rolling stock.

#### Question:

ABC, requests that that you advise on what amount of sales or use taxes would be assessed under either of the above-described scenarios.

ABC, is aware that pursuant to 35 ILCS 105/3-10, taxes are to be assessed based on the selling price or fair market value as therein described. The 'selling price' is the consideration paid less the value of the trade-in. 35 ILCS 105/2.

ABC, believes (but wishes to confirm) that the tax under the first scenario would be on \$636,828.26 (that is, the purchase price of the new aircraft less the value of the trade-in). This is because the exemption under this scenario would have been inapplicable *ab initio*. Interest, it is assumed, would also apply retroactively to the date of purchase. ABC, would also appreciate confirmation as to how interest and penalties, if any, would be determined especially if the intent to use the aircraft as rolling stock was made in good faith.

ABC, is seeking your opinion as to the second scenario which is less clear. There are, perhaps, several possibilities. Among these are:

First, because the rolling stock exemption originally applied, the conversion to a non-exempt use would not constitute a taxable event and no tax would be due.

Second, the tax would be based on the original transaction, that is, \$636,828.26. This would provide ABC, the benefit of the trade-in although the aircraft ceased to be used as rolling stock. ABC, believes, at a minimum, that because 35 ILCS 105/3-10 refers to selling price and selling price is defined to take into account the trade-in, credit for the trade-in should be given.

Third, the tax would be based on the original purchase price or the then fair market value of the aircraft, whichever is less, but without regard to the trade-in. Assuming no change in the value of the aircraft, this would mean that the tax would be based on \$1,475,000. This does not seem appropriate, of course, but the statute does not appear to be clear on this point. It is assumed that the value of the aircraft would not fall below a value of \$636,828.26, but if it did, the tax would be based on that lower amount.

Finally, the tax would be based on the higher of the original purchase price or the then the [sic] fair market value of the aircraft, again without regard to the trade in. It appears clear from 35 ILCS 105/3-10 that this would not be the case and, instead, the lower amount is to be used.

It would also be assumed that if the tax due, if any, was promptly paid after the date the aircraft was retired from interstate commerce, there would be no interest or penalties.

#### CLOSING:

Thank you for your prompt consideration of this request. Should you require further information, please do not hesitate to contact me. Enclosed is a completed Form IL-2848 Power of Attorney.

We look forward to your reply.

### **DEPARTMENT'S RESPONSE**

For information regarding the rolling stock exemption, we refer you to the Department's regulation at 86 Ill. Adm. Code 130.340. The Retailers' Occupation Tax does not apply to sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce, or to lessors under leases of one year or longer executed or in effect at the time of purchase to interstate carriers for hire

for use as rolling stock moving in interstate commerce. See 86 Ill. Adm. Code 130.340(a).

In order to claim the rolling stock exemption for an aircraft, the carrier must be able to document that it has authority to operate as an interstate carrier for hire and show that it does in fact so operate on a regular and frequent basis. Absent the ability to document that the carrier has authority to operate as an interstate carrier for hire and operate the aircraft in a manner that qualifies for the exemption, no rolling stock exemption is available.

The Department's regulation at 86 Ill. Adm. Code 130.425 discusses Traded-In Property. Subsection 130.425(e) provides that "[t]he value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale, where the item that is traded-in is of like kind and character as that which is being sold, shall not be considered to be 'gross receipts' subject to the Retailers' Occupation Tax and need not be included in the seller's return, or may be deducted in the return from gross receipts if included in gross receipts as reported in the return."

In general, when an aircraft is purchased from a retailer, tax is due on the amount of the purchase price. If a qualifying trade-in is offered, tax is due on the amount of the purchase price of the aircraft less the credit for the traded-in aircraft. If an aircraft is purchased and the rolling stock exemption is claimed, but the aircraft is never used as rolling stock, then tax is incurred on the purchase price. If the aircraft was purchased from a retailer, and there was a qualifying trade-in, then the trade-in credit may be used to reduce the purchase price upon which tax is based. Any applicable penalty and interest will relate back to the date of purchase.

If an aircraft that was used by the owner for a period of time as rolling stock is no longer used in a qualifying manner, the owner must file a return with the Department and pay tax upon the purchase price of the aircraft. If the aircraft was purchased from a retailer and there was a qualifying trade-in, then the trade-in credit may be used to reduce the purchase price upon which tax is based. Any applicable penalty and interest will relate back to the date of purchase. However, when an aircraft was purchased by a lessor for lease to an interstate carrier for hire, by lease executed or in effect at the time of the purchase, the lessor will incur tax upon the fair market value of the aircraft on the date that the aircraft reverts to the use of the lessor. In determining the fair market value at the time of reversion, the fair market value of the aircraft shall not exceed the original purchase price of the aircraft. If the aircraft was purchased from a retailer and the original purchase price of the aircraft was reduced by the value of traded-in property, the fair market value shall not exceed the resulting purchase price of the aircraft. The lessor shall file a return with the Department and pay the tax to the Department by the last day of the month following the calendar month in which such aircraft is no longer subject to a qualifying lease. (35 ILCS 105/10) Failure to file or remit the tax timely will result in applicable penalty and interest under the Uniform Penalty and Interest Act. See 35 ILCS 735/3-1 et seq..

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information

Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

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Associate Counsel

MPM:msk  
Enc.